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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/734,793 | 12/12/2000 | Stephen Janiszewski | 246-99-020 | 5175 |

7590 03/09/2005

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| EXAMINER |
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GRAYSAY, TAMARA L

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| ART UNIT | PAPER NUMBER |
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3623

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/734,793

Applicant(s)

JANISZEWSKI, STEPHEN

Examiner

Tamara L. Graysay

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9 and 14-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The substitute specification filed 10 December 2004 has been entered.
2. The amendment filed 10 December 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The drawing Replacement Sheet containing FIG.4 has switched the description for the "YES" (step 152) and "NO" (step 153) answers from that which was depicted in the originally filed FIG.4a. In support of this objection the examiner notes that

- the originally filed specification (p.15) describes the "YES" answer as executing a bidder clarification routine, step 152 (and detailed in steps 158-163 in FIG.4b);
- the specification Replacement Sheet 11, ¶0038, describes the "YES" answer as executing a bidder clarification routine, step 152 (and detailed in steps 158-163 in FIG.5);
- the originally filed specification (p.16) describes the "NO" answer as estimating the bid amount based on historical data, step 153;
- and the specification Replacement Sheet 12, ¶0040, describe the "NO" answer as estimating the bid amount based on historical data, step 153; and,
- original figure 4a is consistent with that which is described in the specification; however, replacement FIG.4 is not.

Applicant is required to cancel the new matter in the reply to this Office Action.

Art Unit: 3623

Drawings

3. Due to the above-noted objection to the amendment, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "153" (in FIG.4) and "152" (in FIG.5) have both been used to designate the step EXECUTE BIDDER CLARIFICATION OF SOFTWARE REQUIREMENT OF DEFINITION; and reference character "152" has been used to designate both the step of ESTIMATE BID FOR BIDDER BASED ON OWN AVERAGE HISTORICAL DATA REQUIREMENT (FIG.4) and EXECUTE BIDDER CLARIFICATION OF SOFTWARE REQUIREMENT DEFINITION (FIG.5), respectively.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Information Disclosure Statement

4. In response to the previous Office action, Applicant has filed remarks indicating that a listing of information was not included with the information disclosure statement filed 28 February 2002 because the IDS "merely transmitted the International Search Report that, in fact, did not identify any publications or other prior art."

As noted in the previous Office action, any information that is submitted in an information disclosure statement must be listed in order for the information to be

Art Unit: 3623

considered. Therefore, the information submitted has not been considered due to applicant's failure to provide a listing of the information.

Claim Objections

5. Claims 14 and 21 are objected to because of the following informalities:

- Claim 14, line 17, it appears that the term "form" should be for.
- Claim 21, line 2, the term "product metrics" has been interpreted as the product metrics of the ongoing project software metric data (claim 20), not the product metrics of the historical software metric data (claim 18).

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US-5862223) in view of Dick (article, Lessons learned from rigorous system software development).

a. Regarding claim 14, Walker discloses a method for electronically conducting a bidding transaction comprising the steps:

- transmitting bid requirements over the network;

Walker discloses a method including the step of an end user creating a bid requirement (user request Ref.120 and method step depicted in Fig.30, Ref.3000) and transmitting the bid requirement over the network (via central controller Fig.30, Ref.3010; also discussed at C.7, L.30-32 and Ref.120 C.17, L.13-35).

- controlling bidder system to display the bid requirements;

The Walker method inherently includes the step of controlling the bidder system to display the bid requirements as exemplified in Fig.30, Ref.3020. Moreover, Walker discloses a bidder display at Ref.425. It is inherent that the display would be presented as a result of the step of controlling the bidder system.

- sending bid with identifier over the network;

The Walker method includes sending a bid as depicted in Fig.30, Ref.3040. Walker discloses that the step of sending the bid includes identifier of the bidder insofar as the end user can choose from the bids that are offered, C.37, L.60-63. If the user can choose from the bids, then the bids must include an identifier of some sort.

- retrieving historical data; generating a bid record with historical data; and communicating the bid and historical data to the contractor.

The Walker method includes the step of retrieving historical data about the bidder insofar as the contractor may review bidder qualifications, C.7, L.59-67, before accepting the bid record (bid offer). Further, Walker

depicts the step of communicating the bid record (bid offer) and historical data to the contractor in Fig.30, Ref.3050.

Walker discloses bidding on a project by an expert, i.e., an entity that is versed in a particular subject. Walker does not limit the field in which an expert may have expertise.

Dick teaches bidding, awarding, and collecting metric data for a software development project. See the abstract; P.555, second column; and, P.557, first column. The Dick method includes improving the process of software development by bidding accurately and being cognizant of changes during the project (development approach used, P.552-555).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Walker, to include software development requirements bidding, awarding, and collecting data, such as suggested by Dick, because Walker generally discloses seeking a bidder who is qualified in a field or subject area in which expertise is needed and Dick suggests the need for qualified bidders in the field of software development and the benefits of collecting data in order to validate the quantitative and qualitative metrics by comparison with historical data and in order to improve the software development process.

b. Regarding claim 15, Walker discloses the steps of : estimating the cost requirements (Walker- bid offer Ref.165); communicating bid and historical data to contractor (Walker- see C.7, L.58-61; Fig.30, Ref.3050); and receiving selection of successful bidder (Walker- see Fig.30, Ref.3070). Dick teaches creating current project metrics data (development approach used P.552-555).

Art Unit: 3623

c. Regarding claims 16-18, Dick teaches collection of both quantitative and qualitative metrics, which inherently includes any aspect of software development that can be measured, including personnel experience, resource, and product metrics.

d. Regarding claims 19-21, Dick discusses particular software metrics to include the number of defects uncovered during development testing and use (P.555, second column).

e. Regarding claim 22, which includes all the steps noted above, and selecting a successful bidder and awarding a contract to develop the software. It is Walker that includes reviewing the qualifications of the bidder (expert) and selecting a bidder (expert) based on whether the qualifications are suitable to the party requesting the bid (expert opinion).

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US-5862223) and Dick (article, Lessons learned from rigorous system software development) as applied to claim 14 above, and further in view of Hevner (article, Phase containment metrics for software quality improvement).

The Walker and Dick combination includes metric data collection and recording, however, the combination lacks communicating the metrics to the user.

Hevner teaches communicating and displaying metrics to users, in addition to performing metrics data collection and recording collected metrics data, in order to produce higher quality projects and enhance productivity.

Art Unit: 3623

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Walker and Dick combination to include communicating the metrics to users for displaying them, such as suggested by Hevner, in order to produce higher quality projects and enhance productivity of the project.

Response to Arguments

8. Applicant's arguments with respect to claims 9 and 14-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Art Unit: 3623

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (703) 305-1918. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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